

REMARKS

This document is filed in reply to the final office action dated June 30, 2003 ("Office Action") and the Proposed Examiner's Amendment for Discussion Purposes dated June 19, 2003 ("Examiner's Amendment"). In the Examiner's Amendment, the Examiner suggested (1) replacing "nutritional solid substrate" recited in claims 1 and 12 and "grain particles" in claims 5, 13, 14, 20-22, and 28 with "rice particle" and (2) canceling claims 3, 4, 30, and 31. Applicants have amended the claims accordingly. Applicants have also incorporated the limitations of claims 5, 14, and 22 into claims 1, 13, and 21, respectively, which has necessitated cancellation of claims 5, 4, and 22. The amendments are made in order to expedite prosecution of this application, and **should be entered as they raise no new issues that will require further consideration or search and also do not touch the merits of the application within the meaning of 37 C.F.R. § 1.116(b)**. Further, Applicants reserve the right to pursue the subject matter of the canceled claims in one or more continuing applications.

Claims 1, 2, 6-13, 15-21, and 23-28 are now pending. Reconsideration of the application, as amended, is requested in view of the following remarks:

Objection to claims 30-31

The Examiner objected to claims 30 and 31 on various grounds. See the Office Action, page 2, lines 6-8. Both claims have been cancelled.

Rejection under 35 U.S.C. § 103(a)

The Examiner rejected all claims for obviousness on various grounds. See the Office Action, page 4, lines 1-2; page 5, lines 3-4; page 7, lines 4-5; and page 9, line 12-13. In view of the above amendments, Applicants submit that the grounds have been overcome and request that the rejection be withdrawn.

Rejection under 35 U.S.C. § 112, first paragraph

The Examiner rejected claims 5, 14, and 22 for containing new matter. More specifically, she contended that the term "cooking" recited in rejected claims was not described in the specification as originally filed. See the Office Action, page 2, line 14 through page 3, line 2.

Although the Applicants have cancelled claims 5, 14, and 22, they will still address this rejection as all limitations of the three rejected claims have been incorporated into pending claims 1, 13, and 21.

As mentioned in the response filed to the action dated July 16, 2002, the phrase "[p]rior to adding to [a] medium, [a] grain may be treated by ...cocking ..." at page 6, lines 4 of the specification contains a typographical error. It should read "[p]rior to adding to the medium, the grain may be treated by ...cooking ..."

Claims 1, 13, and 21 cover methods for cultivating of filamentous fungi, e.g., *Monascus* species, and producing metabolites from the cultivated fungi. A grain is used for fungi to attach to and utilize the nutrients therein. It is well known that "cooking" (i.e., preparing by heating¹) a grain facilitates its utilization. On the other hand, "cocking" (i.e., turning, tipping, or tilting²) a grain does not. In view of this knowledge and the minor typographical difference between "cocking" and "cooking," one skilled in the art would realize that "cocking" is an error and should read "cooking." In the response, Applicants amended the specification to correct the error.

In this connection, Applicants would like to point out:

An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction. *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971). See Manual of Patent Examining Procedure Edition 8, 2163.07.³

¹ See Merriam Webster's Collegiate Dictionary, 10th edition, page 254.

² See Merriam Webster's Collegiate Dictionary, 10th edition, page 220.

³ In *In re Oda*, the United States Court of Customs and Patent Appeal, in reversing a Board's 35 U.S.C. § 112, first paragraph rejection, held that "changing of 'nitrous' to 'nitric' did not involve 'new matter' as 'one skilled in the art would appreciate not only existence of error in specification of invention but also how to correct [the] error.'"

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Here, "one skilled in the art would not only appreciate the existence of error [i.e., "cocking,"] in the specification, but also the appropriate correction [i.e. "cooking"]." Accordingly, the above-mentioned amendment to the specification does not constitute new matter. Thus, these claims contain no new matter.

CONCLUSION

Applicants submit that the grounds for the rejection and objection asserted by the Examiner have been overcome, and that claims, as pending, define subject matter that is non-obvious and sufficiently described. On this basis, it is submitted that allowance of this application is proper, and early favorable action is solicited.

Please apply any other charges to deposit account 06-1050.

Respectfully submitted,

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